



GUATEMALA'S FORGOTTEN CHILDREN

Police Violence and Abuses in Detention

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Human Rights Watch Children's Rights Project

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GLOSSARY

Gaviotas Detention center for boys, located in Guatemala City.

Gorriones Detention center for girls, located near Guatemala City.

NGO Nongovernmental organization.

Pavón High-security adult male prison, for those who have been convicted and sentenced. Minors are rarely held in Pavón.

Pavoncito Adult male prison for those awaiting sentencing. Minors are occasionally held in Pavoncito.

REMAR Spanish-based evangelical organization, "Rehabilitation of the Marginalized" (Rehabilitación de los Marginados). Rehabilitates Spanish and Latin American drug addicts and ex-convicts by having them work with troubled youth.

San José Pinula Detention center for boys, located in San José Pinula, about forty-five minutes by car from Guatemala City.

TOM Office of Treatment and Guidance for Children (Tratamiento y Orientación de Menores). Government agency charged with administering all juvenile detention and protection services.

Zone 18 Preventive detention center. Houses adult males awaiting the filing of charges or trial, as well as post-adjudication offenders. Minors frequently held there as well. Has a separate wing for adult female offenders.

I. SUMMARY

As a 1990 State Party to the Convention on the Rights of the Child, Guatemala was one of the first countries to commit itself to respecting the human rights of children. Nearly seven years later, that commitment has borne little fruit. Thousands of children living in Guatemala's streets face routine beatings, thefts, and sexual assaults at the hands of the National Police and private security guards (who are under the jurisdiction of the Interior Ministry). More serious crimes against street children, including assassination and torture, have lessened since the early 1990s, but still occur. In April 1996, sixteen-year-old Susana Gómez was raped by two National Police officers in Guatemala City while a third kept watch. In September 1996, sixteen-year-old Ronald Raúl Ramos was shot and killed by a drunken Treasury Police officer in Tecún Umán. More than ten other street children were murdered in 1996 under suspicious circumstances. As of April 1997, all of the perpetrators in these cases remained at large.

Three convictions for murders of street children were handed down recently, two in late 1996 and one in January 1997. These convictions, against three private security guards, two National Police officers, and a former military commissioner, were significant and encouraging news. Hundreds of other cases involving crimes against street children, however, remain stalled; most are never even investigated. Crimes against street children are a low priority for police investigators, particularly when a fellow officer is implicated.

In contrast to the impunity enjoyed by police offenders, juvenile offenders, and even non-offenders, are dealt with

harshly. "Juvenile justice" in Guatemala suffers from multiple and severe defects, rendering it less than justice and little more than warehousing. Street children are arrested and locked up arbitrarily, sometimes merely for being homeless, other times for such vague offenses as "creating a public scandal," or "loitering." There are no government programs for street children, the vast majority of whom were abandoned or abused by their families.

Once children are arrested, they may spend months in pre-adjudication detention, often solely because they have no family to claim them. When they do receive their hearing, their due process rights may be ignored by the judge: several children told us that judges had refused to let them speak, or had banished them from the room while hearing evidence against them. These children are not supplied with legal assistance of any kind. Sentences vary enormously, often according to children's economic status.

Judges send other children into detention facilities "for their own protection." Fifty percent or more of all detained girls fall into this category. Children in protective custody are incarcerated together with juvenile offenders. Thus, children who were raped or beaten by their parents, children who were found in a malnourished state, runaways, even some children with physical disabilities, are thrown into the same dreary facilities as are drug addicts, pickpockets, prostitutes, and violent offenders. What's more, ages at the centers range from eight to seventeen. As a result, eight-year-old abuse victims and seventeen-year-old murderers may end up in the same place, together.

Children in detention are offered no meaningful rehabilitation or education, no meaningful psychological treatment, and, with the exception of one facility, no vocational training. They are crowded together in unsanitary conditions, with no privacy and little respect for their personal integrity. Detained children are vulnerable to mistreatment from staff members and from other detainees, sometimes with staff acquiescence. They are left in the hands of untrained and unqualified personnel. All of these conditions contravene international standards.

As titular head of the Social Welfare Office (Oficina de Bienestar Social), First Lady Patricia de Arzú is responsible for Guatemala's juvenile detention centers, or "re-education centers," as some of them are known. Claiming a lack of resources and corruption among their own staff, the First Lady's office has virtually abdicated control over the juvenile facilities by inviting in REMAR (Rehabilitación de los Marginados), a Spanish evangelical organization, which purportedly provides its services free of charge. REMAR is dedicated to rehabilitating Spanish ex-convicts and drug addicts by sending them abroad to work with troubled children. The organization now controls all three of the boys' centers.

A touchstone of the REMAR approach is "the rod." The boys we spoke with had these reactions to the word "REMAR": "beatings," "baseball bat," "aluminum baseball bat," "broomstick," "firewood," "isolation room," "broken finger," and "broken ribs." The use of physical punishment and punitive isolation against children is strictly forbidden under international law. Despite widespread reports of these abuses, no Guatemalan authority is supervising the actions of REMAR: not the Human Rights Ombudsman, not the office of Treatment and Guidance for Minors (Tratamiento y Orientación de Menores), which is under the First Lady and is directly responsible for the detention centers, and not the First Lady herself. To the contrary, the realm of REMAR was recently expanded - until the summer of 1996, they were responsible for only one of the boys's centers.

In addition, REMAR runs nine of its own, private centers for children. Guatemalan minors' judges send nearly 1,000 children to these centers each year. The children remain under REMAR control until REMAR tells the judge that the child is ready to be released. There are no visits from court personnel, no evaluations of REMAR personnel, and no independent monitoring or oversight. Children who had been in these centers reported suffering frequent physical abuse, as well as religious coercion. (Religious coercion was also reported by children in the state facilities run by REMAR.)

In 1996, the Guatemalan legislature passed a new Minors' Code, scheduled to take effect in the last quarter of 1997. The new code is a vast improvement over the existing code. It extends procedural protections to children accused of crimes, including the right to a lawyer at government expense. It forbids the placement of children in protective custody into juvenile detention centers. It also forbids the imprisonment of children for status offenses, such as running away or being homeless. The code contains a host of other improvements - if all of them were implemented, most of the abuses described in this report would come to an end. Until that happens, Guatemala remains an everyday violator of children's human rights.

This report is based on interviews with thirty-five children and youths, conducted in August and September 1996 by a researcher for the Human Rights Watch Children's Rights Project. We also spoke extensively with representatives of Guatemalan and international nongovernmental organizations, including several dedicated exclusively to working with street children. Government officials we interviewed included representatives of the Social Welfare Office of the Presidency of the Republic, the Office of the Human Rights Ombudsman, the Minors' Magistrate, and the Public Ministry's Minors' Division.

The Guatemalan government refused to grant our researcher access to juvenile detention centers. A few centers were visited briefly through other means. Apart from those visits, information on the detention centers was gathered and confirmed through interviews with recent detainees.

II. RECOMMENDATIONS

Recommendations to the Guatemalan Government:

General recommendations:

| The government should take every step necessary to ensure that the 1996 Minors' Code, scheduled to come into force in September 1997, is fully implemented without delay.

| Current abusive practices should be halted immediately to conform to the requirements of international and Guatemalan law. Particular attention should be paid to the practices of the National Police, private security guards (for which the Interior Ministry holds regulatory responsibility), the Minors' Courts, all state-run juvenile detention facilities, and all privately-operated custodial facilities that accept children sent by court order.

| In order to ascertain compliance with international and Guatemalan law, independent nongovernmental organizations, including international human rights monitors, should be allowed periodically to investigate the juvenile justice system in its entirety, or any part thereof, including juvenile detention facilities. These monitors should be permitted to conduct confidential interviews with detained children of their choosing, with the consent of the children involved.

| The government should itself periodically initiate and/or undertake evaluations of the Guatemalan juvenile justice system, including juvenile detention facilities.

Recommendations regarding abuses against street children:

| The Public Ministry and the National Police should thoroughly and impartially investigate all allegations of crimes committed against street children. The current practice of investigating only those cases on which outside pressure is brought to bear must end immediately.

| Complaints regarding police mistreatment of children should be investigated promptly and thoroughly. Where appropriate, disciplinary measures and criminal proceedings should be ordered.

| Any police officer found to have committed a criminal offense against a child should be prosecuted to the fullest extent of the law.

| The Public Ministry should vigorously prosecute all crimes against street children, especially violent crimes, rather than allowing them to languish in inaction.

| All police officers should receive rigorous and periodic training in human rights, children's rights, and relations with street children. What constitutes abusive police behavior should be defined explicitly for all officers. Examples of abusive and prohibited behavior-including stealing, soliciting bribes, soliciting sex, sexual assault, physical beatings, and illegal detention-should be clearly explained.

| Female police officers should be recruited. When possible, police teams working the downtown Guatemala City area should be composed of at least one female, with the goal of reducing sexual violence by police officers against street girls.

| Immediate and concrete steps should be taken to increase the effectiveness of the Office of Professional Responsibility of the National Police, and in particular the responsiveness of that office to complaints alleging police misconduct against children. Procedures should be implemented that will allow complainants and witnesses to protect their identities should they reasonably fear reprisals.

| The emergency hotline number (155), already installed and publicized, should be put into service immediately and publicized again as a working number. Any child or interested party, including police officers, should be able to call the number to report an incident of abuse or obtain information regarding services available to street children. The hotline should be adequately staffed with trained personnel twenty-four hours a day.

| Comprehensive statistical data regarding the situation of street children should be collected and disseminated to the public, to nongovernmental organizations, to the media, and to the U.N. Committee on the Rights of the Child.

Recommendations regarding the administration of juvenile justice:

| All children facing the possible deprivation of their liberty should be provided with a lawyer.

| The practice of lengthy pre-adjudication detentions should be ended immediately. Detention pending trial should be used only as a measure of last resort and for the shortest possible period of time, in accordance with international law. Under no circumstances should a child be held pending adjudication for more than the thirty working days permitted under Guatemalan law, and detention of this length should be mandated only in exceptional cases.

| No children should be held in detention solely because they lack a responsible parent or guardian who is willing and/or able to take them home. Instead, foster care or other non-punitive custody arrangements should be provided.

| Until privately-run REMAR centers are thoroughly investigated, monitored, overseen, and approved by the responsible Guatemalan authorities, no child should be sent by a judge to such a center. Even after such centers are approved and oversight is established, no child should be sent by a judge to a REMAR facility unless the child, in consultation with his or her attorney, so agrees. In the meantime, private or state-run alternatives to REMAR centers

should be established as soon as possible, and should also be subject to a rigorous approval process and ongoing monitoring.

| A child detained in any state or private facility should be interviewed at regular pre-determined intervals by trained and qualified government staff; their rehabilitative progress should be assessed, and their prospects for release should be discussed fully with them.

| No child should be incarcerated for the commission of a status offense (an offense for which an adult could not be jailed).

Recommendations regarding juvenile detention facilities:

| A full investigation into privately-operated REMAR centers should be undertaken immediately, and the findings of that investigation publicized.

| Physical punishment or abuse by staff of children should be strictly prohibited at all facilities, whether private or state-run. Staff found to have abused children should be appropriately disciplined, including dismissal. Where appropriate, criminal charges should be brought against offending staff members. Staff should be fully informed of the rules and consequences concerning physical abuse of children.

| Children should be informed of the internal rules of the facilities to which they are committed and their rights and obligations immediately upon entry. The rules of the institution should be made available to children upon request and posted in highly visible places.

| A complaint system should be initiated that allows detained children to make confidential complaints to facility directors, to the Children's Rights Defender of the Office of the Human Rights Ombudsman, and/or to other appropriate national or international agencies. The system should ensure that all complaints are investigated and responded to promptly.

| In addition, the Children's Rights Defender should make unannounced inspections of all juvenile centers, and should intervene whenever there are reasonable grounds to believe that abuses have been committed.

| Meaningful control and supervision over REMAR staff in state facilities should be implemented immediately. Any direct or indirect financial support to REMAR by the Guatemalan government should immediately cease. Should allegations of abuses by REMAR staff persist, the government should expel the organization from state facilities.

| All juvenile detention facility personnel, including REMAR staff, should be specially trained to work with troubled children and qualified to perform their duties, in accordance with predetermined criteria.

| Each employee in a juvenile facility, including REMAR staff, should have his or her performance reviewed periodically by an independent agency. Such review should include multiple confidential interviews with detained children.

| All disciplinary measures should be approved and witnessed by non-REMAR staff and reported to the director of the Office of Treatment and Guidance for Children.

| In keeping with international childrens' rights norms, corporal punishment should never be used.

- | Under no circumstances should isolation be used as a punitive measure.
- | Children should be kept in separate facilities according to their age groups. In particular, children twelve years old and under should be separated from children over the age of twelve.
- | Physical and sexual abuse between detained children should be strictly guarded against by all appropriate means, including adequate staffing, rigorous monitoring, and the appropriate placement of children in facilities and dormitories.
- | Meaningful educational and vocational training should be instituted at all facilities. Libraries and recreational activities should be made available to all children at all facilities.
- | Toilet and shower facilities should be sanitary and allow for individual privacy. Children should have access to toilet facilities at all times of the day and night.
- | Each detained child should have his or her own bed. Beds and sleeping quarters should be clean, safe, and in good repair. There should be periodic supervision of sleeping quarters throughout the night.
- | Each child should receive adequate medical care, including mental health care. Medical emergencies should be dealt with promptly, regardless of the child's economic status.
- | Each detention facility should implement drug abuse prevention and rehabilitation programs; these programs should be administered by qualified personnel.
- | The government should collect and disseminate statistical data regarding children in detention. Such information should include: the reason for detention; the length of time in detention; the disposition of the case (i.e., measures imposed by judge); the frequency of review of these measures; family history; medical condition, including any substance addiction or abuse; previous detentions; and any complaints or concerns noted by the child.

Recommendations to the European Union:

- | The European Union should develop guidelines for ensuring that its funds are not and will not be utilized by a juvenile justice system that violates the human rights of detained children and youth. An important first step would be to commission a prompt and independent investigation of conditions in the juvenile justice system, with public findings and recommendations; the European Union should use its leverage to ensure that these recommendations are implemented.
- | In particular, the European Union should vigorously protest the use of punitive isolation and physical punishment in children's centers, and insist on adequate state supervision and control over the centers.
- | The European Union and all Member States providing direct and indirect aid to Guatemalan law enforcement agencies should insist on significant improvement in police conduct toward street children. In particular, training programs provided by the Spanish Civil Guard to the National Police should incorporate instructions on coping with street children without abusing their rights. Failure to improve in this area would warrant a cutoff of aid to the police.

Recommendations to the United States:

| The United States government should review the effectiveness of the Office of Professional Responsibility of the police to determine why it has failed to adequately address police violence against street children.

| U.S. assistance to law enforcement agencies should include a component on the human rights of street children. Continued serious abuses by the police should prompt a reconsideration of aid.

Recommendations to the United Nations, including the U.N. Special Rapporteur on Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, the U.N. Working Group on Arbitrary Detention, and the U.N. Committee on the Rights of the Child:

| The U.N. Special Rapporteur on Torture and the U.N. Committee on the Rights of the Child should investigate police violence against Guatemalan street children. They should also evaluate the government's response to this violence, including efforts at prevention and sanctions against offending officers. The findings of these studies should be the basis for detailed and public recommendations to the government of Guatemala.

| The U.N. Working Group on Arbitrary Detention, The U.N. Special Rapporteur on Torture, and the U.N. Committee on the Rights of the Child should investigate conditions of detention for children in Guatemala, including, but not limited to, the use of corporal punishment and isolation. They should evaluate the government's response to illegal conditions and practices in juvenile detention facilities. Based on their findings, they should make detailed and public recommendations to the Guatemalan government.

| The U.N. Working Group on Arbitrary Detention and the U.N. Committee on the Rights of the Child should investigate the extent to which due process protections are observed by the Guatemalan government in depriving children of their liberty. They should make detailed and public recommendations to the Guatemalan government, aimed at full and rapid observance of due process rights in the detention and confinement of children.

| The U.N. Committee on the Rights of the Child should devote a theme day to the topic of police violence against street children.

III. ABUSES AGAINST STREET CHILDREN

Background

Street Children

Street children in Guatemala number between 1,500 and 5,000, the majority of whom reside in Guatemala City.¹ Girls make up between 20 and 30 percent of Guatemala's street children.²

Human Rights Watch follows the definition of street children formulated by the Inter-NGO Programme for Street Children and Street Youth:

Street children are those for whom the street . . . more than their family has become their real home, a situation in which there is no protection, supervision or direction from responsible adults.³

In Guatemala, most of the street children we spoke with lived and slept in the streets, finding shelter in parks, under stairways, and in doorways. A smaller number slept in cheap flophouses, pooling their money with friends in order to rent a room for the night. Others spent their days in the streets but returned to their homes to sleep.⁴

Sixty-five percent of Guatemala City's street children and youth are between the ages of ten and seventeen.⁵ Most of the rest are eighteen or older, with only about 3 percent younger than ten.⁶ The majority live in the downtown area of Guatemala City, and more than 60 percent are from Guatemala City itself. Approximately 10 to 15 percent have migrated to Guatemala from neighboring Central American countries, especially Honduras and El Salvador. The remaining 25 percent are from other areas of Guatemala, both urban and rural.

Although there are street children in other Guatemalan cities, nongovernmental outreach and shelter programs are concentrated primarily in Guatemala City. There are no government programs for street children anywhere in the country.

The practice of inhaling the fumes of shoe glue (*pegamento*) or paint thinner (*solvente*) is prevalent among Guatemalan street children, who get high to escape pain, hunger, and desolation. Seventy-five percent of Guatemalan street children themselves told Casa Alianza they were frequent inhalant users or addicts.⁷ According to Casa Alianza street educators, however, more than 90 percent are most likely addicted to chemical inhalants.⁸ Nearly every child and youth we interviewed on the street, some as young as eight, inhaled paint thinner during the course of our conversation, some of them continuously. Some of the children were so intoxicated they had trouble speaking. Long-term mental impairment was apparent among older street youth, and was attributed by street youth and street educators alike to years of inhaling the chemical fumes. "It eats your brain," one boy told us. Toluene, a potent chemical that destroys brain cells and other organ tissues, is a common component of the industrial solvents and glues used by the children.

Robbery, prostitution, and begging are the main sources of income for most street children.⁹ Street educators say that the majority of street children engage in petty thievery, and the majority of street girls prostitute themselves, usually beginning at the age of twelve.¹⁰ Condom use is sporadic, and the pregnancy rate among street girls is high. The Casa Alianza staff physician confirmed the high rate of pregnancy among girls,¹¹ as well as a growing rate of AIDS infection. From January to September 1996, he saw eight girls with AIDS, including three who died. The only boy he had seen with AIDS was a transvestite.¹² Health workers and street educators predict that the incidence of AIDS will rise dramatically without intervention.¹³ To date, there are no government AIDS education programs, much less any outreach toward street children and prostitutes.

The Casa Alianza physician also stated that the following ailments are common among street children: head lice, intestinal parasites, skin parasites, pneumonia, tuberculosis (afflicting 30 to 40 percent of the children); and a host of sexually transmitted diseases, including gonorrhea and syphilis - these diseases are most common among girls.¹⁴

Regarding the health hazards of police abuse, the doctor said:

A few years ago it was very common to see kids who had been beaten up by the police. They would beat them, sometimes severely . . . I saw burst bladders and intestines, broken ribs. They'd make the children swallow bags of glue. I still see these kinds of abuses, but less than before. Five years ago, I'd see four or five cases of police beatings a day. Now, I see five or six a month. Bruises, contusions.¹⁵

According to the doctor, beatings now come at least as often at the hands of private police as from National Police. "Those guys, yes, they are very aggressive with the kids," he told us.¹⁶ At the time we spoke with him, Dr. Zamora had been the Casa Alianza staff doctor for nine years.

Many of the children we spoke with, particularly the younger boys, were barefoot, poorly clothed, and covered with scrapes and cuts. Street educators carry first-aid kits and minister to the children's minor medical needs on the spot, dispensing antibacterial salve, band-aids, and aspirin.

According to street educators, social workers, and the children themselves, the vast majority of these children are on the streets because their families have abused or abandoned them. One study, for example, found that 64 percent of street girls interviewed had been victims of incest.¹⁷ The following stories, told to Human Rights Watch during our mission, are typical:

| Victor,¹⁸ eight or nine years old, spends his days inhaling paint thinner and scavenging for money in the main bus terminal of Guatemala City. His mother, an alcoholic, begs in the terminal and sends Victor and his sister out to beg for money as well. Whatever they collect they turn over to her; she uses this money to buy more liquor. Victor wants to go to a shelter for street children, but his mother opposes it. Several months ago, other street children doused Victor with gasoline and set him on fire, inflicting first degree burns over his thighs, groin, and genital area.¹⁹

| Juan Alexander, sixteen years old, had been on the streets for five years at the time we interviewed him. His father had died when he was one, and his stepfather was a physically abusive alcoholic. After years of suffering from violent attacks and trying, unsuccessfully, to protect his mother, Juan Alexander left home at the age of twelve. Once on the street he began to inhale glue. Soon, he was using other substances as well - marijuana, beer and cheap liquor, barbituates and amphetamines, and cocaine. He supported himself by robbing, begging, singing on buses for donations, and washing trucks.²⁰

Susana, sixteen, was originally propelled onto the street after being raped by a neighbor. After her rape, she lost all interest in studying or going to school.

I just wanted to do drugs. Finally my family asked me to leave the house, and I did, and I never went back. And I am not going back to my house. . . . It's so sad. This is why I do drugs. To forget for awhile. To try to forget.

Most street children are there because they've had problems at home. Either they've left because the problems are too bad, or they've been kicked out by their parents. Then they come on to the street and get addicted to drugs. It's difficult to get out from under a drug addiction. It's a road with no exit.

Robbing is very risky. The police are dangerous and the people on the street are dangerous. You could get stabbed, you could get raped. Last night, two kids got in a bad fight over some glue. You could get killed over something like that.

Each of us has our own unique problems. I'm going to enter a refuge for street girls. God willing.²¹

Killings and other Violent Assaults: Trends since 1990

International scrutiny turned to Guatemala in the early 1990s, as National Police officers and other government security force members were implicated in dozens of vicious assaults against street children, including fourteen murders in a single eighteen-month period.²² The worst year for such killings was 1990, beginning with the brutal murder of thirteen-year-old Nahamán Cardona López in March.²³ By the end of the year, several boys had been killed and dozens wounded. Twenty-six National Police officers and four private security guards were implicated in these crimes.²⁴

The attacks included severe beatings, forced ingestion of toxic shoe glue, torture and mutilation, death threats, and point-blank extrajudicial executions. Casa Alianza began publicizing these cases and pushing for police accountability for human rights abuses against street children, an effort unprecedented in Guatemala. These efforts, reinforced by the increasing independence of successive civilian governments,²⁵ led to a decline in the most egregious forms of abuse by government security forces. Nonetheless, the streets remained a dangerous place for children.

Nineteen ninety-four was the worst year for homicides of street children since 1990, with thirteen murders recorded.²⁶ Nineteen ninety-six was also a grim year, with at least ten street children and youth murdered, including one who was shot at close range by a uniformed Treasury Police officer. (See "Murders," below.) In contrast to the killings of the early 1990s, however, when most attackers were police officers, the majority of the perpetrators of 1996 murders were unidentified. They have been off-duty government security force members, security guards for private businesses or individuals, or even private citizens engaged in a particular vendetta against street children because of their imputed criminality. An increasingly pervasive culture of violence in Guatemala City, in which ever-larger numbers of people are bearing arms, and violent crimes are skyrocketing, contributes to this phenomenon. Indeed, independent sources informed us that some of the violence against street children is being perpetrated by organized crime elements. Reportedly, street children are being used as drug couriers and as accomplices to car-theft rings.²⁷ When they learn too much or otherwise become a liability, these children reportedly are killed.

Waves of violence against street children have been denominated as "social cleansing" efforts in Guatemala and elsewhere.²⁸ In Guatemala, the "social cleansing" phenomenon has targeted street children as well as other perceived criminal elements of society, and has been denounced repeatedly by the U.N. Human Rights Mission to Guatemala (MINUGUA) and by domestic human rights organizations. "Social-cleansing" murders are rarely investigated by the authorities.

Widespread impunity allows violence against street children to continue. In Guatemala, of the nearly 300 criminal complaints filed by Casa Alianza on behalf of street children, only a handful have resulted in prosecutions. In the vast majority of cases, incidents are not investigated, and perpetrators are not arrested. When they are, convictions may require years of concerted pressure, only to be, not infrequently, overturned on appeal. Sentences are often light, and compensatory fines imposed by the courts have never been collected. (See "Failure of the Government to Arrest, Investigate, Prosecute, and Convict," below.) Against this background of impunity, it is not surprising that private and governmental security forces continue to target street children for abuse.

Abuses by National Police and Other Government Security Forces

"Ugly things happen on the street."²⁹

The Guatemalan Constitution requires that the state "guarantee and protect human life . . . as well as the integrity and security of the person."³⁰ International law strongly protects these same rights. The International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child all prohibit torture and cruel, inhuman, or degrading treatment.³¹ Guatemala has ratified all three of these human rights conventions. Nonetheless, as the following pages illustrate, these laws are flouted on a daily basis by Guatemalan law enforcement agents.

Routine Violence: Theft and Assault

Nearly every child we spoke with told us of habitual assaults and thefts by the police. Usually, the officers accused of these crimes belonged to the 2nd and 5th precincts, which work in the downtown area of Zone 1.³² These assaults occurred on busy city streets in broad daylight, on quiet streets in the middle of the night, in alleys and deserted areas, and in police stations. Often, they were witnessed by passersby or other police officers.

Beatings may be used in the course of frequent thefts against street children; at other times, beatings are delivered solely as extrajudicial punishments. Another commonly-reported practice is for the police to extort money from the children by threatening to imprison them (on false charges) if they refuse to pay the police. If the child has committed a crime, the police often solicit bribes in exchange for his or her freedom. Sexual assaults against female children and

youth are also common.

Mauricio, a street youth, told us the following:

Two weeks ago I had long hair. But police officers from the 2nd precinct came and picked me up, and took me down to the station. First they poured glue over my head. Then they cut my hair off with two straight razors. They accused me of stealing and inhaling glue, but they didn't charge me with anything, or take me to the tribunals. They just harassed me and shaved my head. That has happened to me many times.

I was wearing two chains [necklace chains] when they picked me up, but I gave them to a friend of mine so the police wouldn't steal them. Yesterday, two different police officers stole these chains from me. I was disoriented [from inhaling glue]. They stole them and then left. It was nighttime, no one was around, just me and my girlfriend. They also took fifty quetzales and my watch.

It happens all the time, police stealing jewelry and money from us. You practically can't wear a chain or anything - they'll come up and hit you and take it away. They don't like to see us wearing jewelry. It makes them jealous.[33](#)

Mauricio's girlfriend, Maritza:

Last night two police from the 2nd precinct robbed me. This was when they stole my boyfriend's chains and money; they wanted my money, too. I didn't want to give them anything, but they hit me and took my money - twenty-five quetzales.

It was late at night. I saw the patrol car, but I forget the number of it. We were on our way to a hotel to get some sleep. They caught us alone in a dark street.

They hit me twice in the stomach, hard. Then one of them put his hand in my blouse and between my legs, feeling me. Supposedly he was searching me, but really he was just feeling me. They always do that to us girls, it's very common.

I was also hit by police officers recently near the National Palace. These police who attack us, sometimes they wear jackets over their uniforms, so we can't see their name badges.[34](#)

Juan Alexander, a sixteen-year-old, had been on the street for five years when we interviewed him. Regarding abuses by the police, he told us that:

The police are always telling me to give them money. They say if I don't, they'll arrest me. . . . Oh, this happens all the time. Probably this has happened to me fifteen times or more.

How can this be, that the agents of justice ask us for money? When we're not doing anything to them? And to think, some poor kids are hauled away and beaten up, just because they don't have any money to give to the police.

Another thing they'll do is take you down to the station and make you clean it - they say they'll arrest you if you don't. And they hit us, sometimes. On the street and also at the station; they'll hit us in front of the other police. Also they step on our hands with the heels of their boots and press down hard and twist. And they sit on our backs and make us do push-ups.[35](#)

David, sixteen years old:

When they catch you robbing, they kick you and hit you with their batons, and five or six of them will beat you up right there on the street. First they put the handcuffs on you, then they beat you up. Later they'll take you to the courts. . . . They just want money, the police. If you don't give it to them, they lie to the judge, say they found you doing drugs, or with a knife, or robbing someone. They accuse us of things we didn't do, and the judge believes them.[36](#)

Beto, fifteen years old, had been on the street since he was ten years old. He told us:

The police treat us badly. They hit us. Not for any particular reason . . . just because they feel like it. They've hit me lots of times. They hit with their rifles, or with sticks, on our backs and stomachs. And sometimes they just punch us in the stomach with their hands. They also take our paint thinner and pour it over our heads. They've done that to me five times. It's awful, it hurts really bad. It gets in your eyes and burns; for half an hour you can't see anything.[37](#)

Miguel Angel, a youth with nine years of experience on the street:

The police bother us every single day. They hit us and steal our money, our shoes, our jackets. If you don't give them what they want, they'll beat you up or arrest you. . . . We can't say anything, or they'll hit us harder. The 2nd and 5th precincts are the worst; Zone 1 is the worst.[38](#)

Dolores, a street youth for more than six years:

The police take us down to the station and make us pay them ten or twenty quetzales so they won't arrest us. If we don't give it to them, they beat us, or put false charges against us; for example, they say they found us smoking marijuana.

Two months ago, I had a bad experience with the police. I was sleeping in the park. Two 2nd precinct police came up and told me to give them my money. I had about twenty quetzales. They said if I didn't give it to them, they'd charge me with possession of marijuana. They said they had the marijuana with them and would put it in my bag. They kicked me in my back to make me move. I gave them my money.

Yesterday the police came up, they put this thing in my mouth that gives a shock. It is the battery from their beeper, the piece they plug in to recharge. It hurts a lot. They did it just to hurt me. . . . There are some good police, but most of them are bad. They get a kick out of hurting us.[39](#)

Street educators and others who work with street children confirmed the occurrence of these police practices. Some considered the rate of such abuses to have lessened in the past two years, although others asserted that police behavior was in fact worsening. The children and youth themselves were consistent in their reports of frequent assaults and robberies.

Violence Against Girls: Sexual Assault and Rape

Girls on the street are additionally vulnerable to sexual attacks.[40](#) Several told us that they suffered routine sexual assaults at the hands of private and government police officers. Children's rights activists confirmed the common nature of such assaults. Rape by police officers is reportedly on the wane;[41](#) nonetheless, at least one street girl was raped by uniformed police officers in 1996.

Susana, sixteen years old, talked to Human Rights Watch about the abuses directed toward girls, including sexual assault, abuse of authority, and rape. Susana was raped in April 1996, by two uniformed police officers. A third officer kept watch.

Both the private police and the National Police make us give them money or things, so they won't take us prisoner. Well, if they don't know you're a street kid, they won't do that; but if they know you're a street kid, they'll do it every day. They ask for all you have. If you don't have any money, you have to come up with something else. Or they'll say you have to sleep with them, otherwise they'll put you in prison.

Sometimes they're very aggressive. For instance, they'll say they want to search me, but really they're just touching me - they just want to feel your body. Sometimes if we resist, they won't do it. But some do touch us. They touch us and then they laugh together. They laugh and laugh. . . . As far as I know, they don't have the right to do that.

This happened to me a few months ago. Three police officers from the 2nd precinct took me . . . they said they'd been transferred down from the Petén. They said if I didn't sleep with them, they would plant marijuana on me.

It was at night. I was with my friend Carmen. They said the same thing to her. It was the Day of the Calvary, Easter Week, and Carmen and I were watching a religious procession on 18th Street. These three police came up to us and took us away. It was about 10:00 p.m. They walked us way over to the Mateo Flores stadium. When we got there, they took us behind the stadium, into a dark alley.

They raped me there. Two of them did. The third kept Carmen by him and kept watch for anyone coming by. They said if we made any noise they would take us prisoner, and put us in prison for having marijuana. They kept us there for about an hour.

Afterwards, one of them said to me: If you have any problems and need some help, come look for me at the 2nd precinct station, and I'll help you. He said this in a very sarcastic way. He was humiliating me.

They left us at the train station and gave us two quetzales for bus fare. We went to the Casa Alianza refuge. They took me to the hospital. Later I left, to avoid everyone bothering me.

I saw him once since then, dressed in street clothes. When he saw me, he took off running.

I'm sure this has happened to many other girls. But usually they won't say anything about it. . . . Ugly things happen on the street.⁴²

A teacher with the National Children's Movement, who had himself been on the street for more than ten years, beginning at age eleven, said that girls typically suffer the full range of abuses meted out to boys, plus additional gender-related abuses. "The police will say they want to sleep with a girl. If she refuses, they will arrest her, and charge her with 'clandestine prostitution.'"⁴³

Homicide and Attempted Homicide

At least ten street children fell victim to homicides in 1996; others survived attempts on their lives and were seriously wounded in the process. In most of these cases the perpetrators have not been identified and it is unknown whether they were government agents, private security guards, or citizen "vigilantes".⁴⁴ In at least one case, however, an agent of the Guatemalan government-Treasury Police Officer Armando Ezequiel Ramírez-shot sixteen-year-old Ronald Raúl Ramos, a street youth, in an execution-style killing.

Shortly before he was murdered, Ronald Raúl spoke with our researcher at a Casa Alianza home near Antigua, Guatemala. He told us that he had been on the streets since he was seven, first in his native El Salvador, and then, since

1990, in Guatemala. Ronald Raúl made his living by begging and robbing. He had been imprisoned several times, including a stint in Zone 18, an adult prison, when he was fifteen. He told us he had been harassed and beaten by government and private police repeatedly. At the time of our conversation, he was in a drug rehabilitation program run by Casa Alianza.

Two weeks later, Ronald Raúl was in Tecún Umán with a friend. Tecún Umán, in the department of San Marcos, is a town on the border with the state of Chiapas, Mexico; presumably, the two boys were planning to cross into Mexico. At midday on September 20th, 1996, on the banks of the Suchiate River, which separates Guatemala from Mexico, Ronald Raúl's body was found. It had a bullet wound in the nasal region and an exit hole in the back of the head.[45](#)

According to Casa Alianza, the officer had approached the children in a drunken state and demanded that they give him money before shooting Ronald Raúl. A report from the Treasury Police confirmed that the person accused of the murder was Officer Armando Ezequiel Ramírez Ramírez. According to this report, after shooting the boy, Ramírez handed over his rifle and pistol to two other Treasury Police officers and then absconded. To date, the accused has not been apprehended.

Other murders of street children and youth in 1996 included, but were not limited to, the following:

| **Octavio Díaz**, seventeen years old, who was found dead on January 1, 1996. Octavio was killed by a single shot to the head, administered at close range. A bayonet was found nearby. Although no suspects have been named, a source familiar with the murder reported that a National Police officer was implicated.

| **Blanca Azucena Guerra Zetc** and **Armando Valdemar Velázquez Valdez**, both thirteen years old, were killed together with **Clara Luz Guerra Zetc**, seventeen years old, on June 8, 1996.[46](#) Their bodies were found near Guatemala City. The three were killed by knives or machetes; their heads were nearly severed in the attack. There were signs of torture on at least one of the bodies (the boy). Notes attached to their bodies described the victims as "thieves" killed by "concerned neighbors." As of March 1997, no progress has been made in the case, and the victims have not been identified.

| **Marvin Aju Barrientos**, age unknown, was shot in the early morning of August 4, 1996, by the apparent companion of a drunk he was trying to pickpocket.[47](#) After shooting him in the chest, the aggressors ran off. Marvin was taken to the emergency room of the hospital, where he was pronounced dead on arrival. The two men were dressed in black sweaters and jeans. No progress has been made in solving this case, despite the availability of three eyewitnesses.

| **Carlos Emir Arriaza Vásquez** and **Victor Noe Joj Pac**, twelve and fourteen years old, respectively, were found murdered in the early hours of October 6, 1996. Their bodies were discovered in a soccer field in Mixco, an urban area adjoining Guatemala City. The boys "had been beaten, decapitated, and stabbed in different parts of their bodies."[48](#) Reportedly, these murders were gang-related.

Authorities showed a disturbing lack of interest in investigating the killing of these boys. The Public Ministry, responsible for investigating all crimes, reportedly justified its inaction on the grounds that the families of the victims had shown no interest in the case, and that therefore an investigation was unnecessary. The Public Ministry did not even request to see the coroner's reports, nor did it ask for a police investigation.[49](#)

Attempted murders in 1996 included:

| **Edgar Augusto Pérez, Estuardo de Jesús Pérez, and "Miguelina,"** all street children, were attacked on January

20, 1996.⁵⁰ The two brothers, eleven and ten years old, and the sixteen-year-old girl had been sent to steal hubcaps by three adults. As they finished stealing the hubcaps from a parked car, a red Mercedes Benz that was driving by stopped; three armed men exited and began to shoot at the children. Edgar was struck by three bullets, and Estuardo and Miguelina by two. To date, the assailants have not been identified.

| **Carlos Antonio Mejía Chávez and Juan Pablo Méndez**, twenty and fifteen years old, were shot by an assailant in civilian clothes --later identified as a police officer-- in the pre-dawn hours of January 21, 1996. The two were sleeping with several other street children when a man approached and, without speaking, began firing a pistol at them. Carlos Antonio was hit in the neck and in the chest; Juan Pablo was hit in his right leg. The other children safely escaped.

A number of the children provided a detailed physical description of the attacker, who was nonetheless never apprehended. The National Police reportedly did not investigate this case, nor was it covered by the Guatemalan press.

Human Rights Watch spoke with Juan Pablo, who survived the attack. He said that: "In January of this year [1996], I was sleeping with some other kids when a police officer came over and shot into the group of us. . . . He wasn't in uniform. But we had seen him before - we knew he was a police officer."⁵¹ Juan Pablo did not know of any possible motive for the shooting.

Harassment of Street Educators

Several organizations, including Casa Alianza, the Movimiento Nacional de Niños (National Children's Movement), CEDIC (*Centro de Desarrollo Integral Comunitario*) and Sólo Para Mujeres (Just for Women), utilize an outreach system based on "street educators." Street educators spend several hours each day on the streets and in the parks of Guatemala City, making contact and establishing relationships of trust with street children. They tend to the children's wounds, help resolve conflicts, and encourage the children to enter shelters, where drug use is prohibited. They are often the only authorities the children trust and respect, and it is to the street educators that children turn when they have problems, including problems with the police.

Harassment of street educators by National Police officers, common in the early nineties, remained a disturbing problem in 1996. CEDIC reported frequent intimidation of its workers by police; "they are always accusing the educators of distributing drugs," said Edgar Alay, one of CEDIC's directors.⁵²

Various Casa Alianza educators also reported incidents of harassment by the police. One such incident occurred on September 14, 1996, when a Casa Alianza worker stepped in to protect a boy who was being beaten by a police officer. As the officer hit the boy, the street educator approached and told him that he had no right to hit the boy, to which the officer responded, "I don't care." The educator then told the police officer that he worked for Casa Alianza. The officer repeated that he didn't care, and the officer's partner offered the same response. The officer who had hit the boy then began hitting the educator lightly and repeatedly on the shoulder. When the man protested, saying "Don't touch me. You have no right to touch me," the officer waved his gun in the educator's face and said that he was the toughest guy in town, and for him bullets were just pills.⁵³

On January 6, 1996, Treasury Police officers surrounded a shelter run by the Movimiento Nacional de Niños, and kept it surrounded for three days, during which they prevented anyone from entering or leaving the house.⁵⁴ On January 8, the officers finally left. They never offered a reason for the siege.

On March 22, 1996, a group of about sixteen National Police officers from the 1st precinct went to the same house, illegally entered it without a warrant or permission, and searched it.⁵⁵ They questioned the staff repeatedly, asking what kind of children lived there, why they lived there, what kinds of drugs they consumed, and what the names were of

all people residing there. According to Toledo, the presence of North American volunteers may have ameliorated the situation.

The following morning a SWAT-style police team burst into the house violently, again without a warrant of any kind. Toledo, denominating the assault an "act of intimidation," said that it created ongoing insecurity among workers and the twenty-three children living there.

In late April 1996, a different shelter run by the same organization was visited by approximately five police officers, who wanted to arrest all twenty-two children who lived in the house (none of whom were present, as it was a school day), as well as the workers. The men were dressed in plainclothes and came in a car without license plates. They were armed and carrying radios. One of them displayed a card identifying himself as a National Police officer assigned to the Minors' Section and he claimed to have an order from the Minors' Magistrate, but refused to show it. Organization staff contacted the Minors' Magistrate and the Chief of Police; both denied having approved any such operation. The chief said he would send other officers to investigate the incident, but they never arrived, and no investigation was ever conducted.

Illegal Detention

Guatemalan law requires that all children detained by the police be taken immediately before a judge.⁵⁶ During regular court hours, the children are to be taken before a minors' judge (there are three); at all other times they are to be taken before a justice of the peace. After this preliminary hearing, the children are to be either released or taken to a juvenile detention center. Under no circumstances is a child to be held, no matter how briefly, at a police station.⁵⁷

Despite this well-known legal provision, Human Rights Watch learned of numerous instances in which children were taken to police stations. Once there, many were interrogated and subjected to coercion, including in some cases physical abuse. Lengths of detention at police stations ranged from an hour or two up to twelve or more hours.⁵⁸

Daisy, a fifteen-year-old, told us she had been taken with another girl to a 2nd precinct police station, where they were held for three hours before being taken before a judge.⁵⁹ Graciela, sixteen years old, was also held for several hours at a 2nd precinct station. While there, she and her friend asked if they could make a telephone call to Casa Alianza. The police refused, saying, "those Casa people are just jerk-offs."⁶⁰

Claudia, fifteen years old, was interviewed by Human Rights Watch at a shelter for girls. She had recently escaped from Gorrones, the girls detention center outside Guatemala City. It had been her first detention - she and several other girls were arrested and charged with theft. Claudia told us:

I was arrested by the police at 8:00 a.m. They took us to the station. They told us to give them the things we had stolen - a watch and a chain - and they would let us go free. We turned over the stuff, but they didn't let us go. They kept us there all day, until 6:00 p.m., asking us questions: where we hung out, where we robbed, who sold drugs to us . . . that kind of thing. Finally, they took us to the Observation Center.⁶¹

Outside of Guatemala City, the practice of illegally detaining children may be worse. One boy, fifteen-year-old Beto, told us that the previous year he had been held for five days in a police station at Puerto San José, on Guatemala's Pacific Coast. After five days he was taken to the courts in Guatemala City.⁶²

In addition to violating Guatemalan law, the practice of illegal detention violates international law, including the Convention on the Rights of the Child ("No child shall be deprived of his or her liberty unlawfully or arbitrarily") and the International Covenant on Civil and Political Rights ("No one shall be subjected to arbitrary arrest or detention").⁶³

Abuses by Private Security Forces

All private security agencies and their guards-referred to as "private police" in Guatemala-are under the jurisdiction of the Interior Ministry.⁶⁴ The law governing private security agencies requires that such agencies and their guards be approved by the Interior Ministry, in a process that also requires approval by the National Police, the Public Ministry, and the president of Guatemala.⁶⁵ The Private Police Law provides in detail for close government control over private guards, including their licensing, the training and hiring of individual officers, the weapons issued to them, periodic review of their conduct, and sanctions to be applied in the case of misconduct or criminal action.⁶⁶

Unfortunately, this multi-layered system of oversight is not applied in practice, with the result that the actions of private security guards in Guatemala are notoriously unsupervised. They are hired without adequate training, their conduct is not overseen or evaluated, they sometimes carry their own weapons, and, when they do commit serious crimes, they are rarely brought to justice. Street children are frequent victims of abuse at the hands of private security guards.

The private guards from the bank also come and harass us all the time. They pull their pistols out and make us come out of the women's restroom [at the park]. They push us around. They just do it to give us a hard time, to be powerful over us; we're not bothering them at all.

Last week a private police officer grabbed me, threw me to the ground, and stepped hard on my stomach with his boot. Then he called the regular police, and they came and took me away . . . At the station they charged me with "public scandal" [*escándalo en la vía pública*]. But I wasn't doing anything, I wasn't drunk, I wasn't even high. That's just what they charge you with if they don't have any real charge to put against you.

-Maritza, nineteen years old⁶⁷

They [private guards] are very aggressive with the kids. I see more injuries from them than from the National Police.

-Dr. René Zamora, Casa Alianza physician⁶⁸

In January [1996], we saw a private guard shoot at a boy who had robbed something. The private police are not adequately controlled. They carry their own guns, unregistered.

-Mario Alvarado, Casa Alianza Street Coordinator⁶⁹

Corruption is one reason why private security guards and their employers so often escape accountability for their crimes and abuses of authority. Many of the private agencies are owned by powerful former military officers, who maintain their ties to government security forces and can be dangerous to cross. For example, several guards from the private security agency "Los Vigilantes" have been implicated in serious crimes, including murder. The founder and, until his death in August 1996, owner of Los Vigilantes was Colonel Manuel de Jesús Valiente Tellez, the feared former head of the Guatemalan National Police Criminal Investigation Unit (Sección de Investigaciones Criminales). In addition to his power as a ranking security force officer, Valiente Tellez reportedly "amassed a small fortune" during his years with the National Police.⁷⁰ The combination of money and influence is a potent one; several Guatemalan commentators told Human Rights Watch that Los Vigilantes guards had escaped accountability for their crimes because of the ability of Valiente Tellez to intimidate or bribe law enforcement officials and judges.

Failure of the Government to Protect Street Children and Prevent Abuses

Despite this longstanding and well-documented pattern of police abuses, the Guatemalan government has done little to protect street children and prevent future abuses. There are no government shelters for street children, nor are there any government employees working with street children or investigating conditions on the street.

A long-promised hotline for street children, funded by a grant from the U. S. Agency for International Development (USAID), was still not functioning as of March 1997. The hotline effort was part of a \$3 million, three year (1995-1997) grant by USAID; \$580,000 of this grant money went to the office of the Children's Rights Defender of the Human Rights Ombudsman.⁷¹

In addition to the funding, USAID provided technical and material support for setting up the hotline. The European Union also provided assistance, which is ongoing as of March 1997. The emergency hotline number, 155, was publicized beginning in early 1996 and was included in the 1996 telephone directories. Nonetheless, the system was not functioning as of March 1997, allegedly due to technical problems.⁷²

Rigorous human rights training of law enforcement agents is a key element in ending police violence against street children. The Convention against Torture requires each state party to "ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel . . . and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment."⁷³ The new Guatemalan Minors' Code, scheduled to take effect in September 1997, directs the National Police to create a specialized children and youth unit, which will be responsible for training all police officers regarding children's rights, including those rights protected by the Convention on the Rights of the Child.

Since 1996, the training of new recruits at the National Police Academy has included a section on human rights, taught by personnel from the office of the Human Rights Ombudsman.⁷⁴ Given the ongoing prevalence and severity of police violence against street children, however, it is imperative that such training be repeated at frequent intervals, and that the sanctions for violating children's rights be severe and applied without exception. Potential sanctions should include transfer to administrative duty, suspension, dismissal, and the lodging of criminal charges against the offending officer. Officers should be reminded that the 1996 Minors' Code enhances the penalties for crimes committed against children by government and private security force members. (See "Guatemalan Law," below.)

Failure of the Government to Investigate, Arrest, Prosecute, and Sanction

Recent Convictions: A New Trend Toward Accountability?

In a welcome change from the usual impunity enjoyed by security force agents, three recent cases resulted in murder convictions, two in late 1996 and one in early 1997. In November, Oscar Leonel Jiménez Nájera, a former security guard for the "Los Vigilantes" private security company,⁷⁵ was sentenced to eight years in prison for murdering nineteen-year-old Marvin Benjamín Monterroso in 1993. Marvin and several other youths and children had been walking past a downtown restaurant guarded by Jiménez when the security guard opened fire against the group, shooting indiscriminately. Marvin died at the hospital shortly afterward.

A few weeks after this ruling, convictions were handed down in the notorious "Shute Bar" case. On January 6, 1995, in the Shute Bar in downtown Guatemala City, Oscar Rene Marroquín ("Coquín"), a twenty-one-year-old street youth, was pushed into the bar's restroom by a security guard and shot in the head. The guard, Arnoldo Martínez Gonzales, then called the owner of his security agency, SEPRIGUA, ex-military officer José Antonio Parada. Parada in turn went to the 2nd precinct police station, where he contracted with two police officers to dispose of the body. These three men then went to the Shute Bar, got Coquín's body, took it away, and dumped it. Parada paid the police officers \$500 quetzales each - roughly one hundred U. S. dollars.

Martínez received a fifteen-year sentence; Parada and the two police officers received sentences of three years each, for concealing a crime. Damages to be paid jointly to Coquín's family were set at 100,000 quetzales (nearly US\$17,000.00). (Such damages are almost never collected.) In addition, the judge ordered that prosecutions be initiated against the then-chief of the 2nd precinct, the owner of the bar, and a waiter at the bar.[76](#)

Finally, on January 22, 1997, a ten-year conviction was handed down against Carlos Morales Sosa for the April 1993 murder of street youth Henry Yubani Alvarez Benítez, eighteen years old. At the time of the murder, Morales Sosa was a military commissioner - a civilian employed by the army in an essentially paramilitary capacity.[77](#)

These convictions are an encouraging development, but remain exceptions rather than the norm. Most cases involving crimes against street children, particularly when security force members are implicated, are still not vigorously investigated or prosecuted.

Some of the most egregious cases of impunity have been referred by Casa Alianza to the Inter-American Commission on Human Rights.[78](#) The commission accepts petitions when all domestic remedies have been exhausted, or when domestic remedies have been interfered with, denied, or subjected to unwarranted delay.[79](#) A good example of failed domestic remedies is the case of Cecilio Jax and Juan Ramos Cifuentes, who were tortured and killed in July 1994.[80](#) The suspect in the case is reportedly a powerful local businessman involved in drug trafficking; government officials are loathe to move against him due to their fear of reprisals. Instead, the case has foundered, and would have died altogether but for the efforts of Casa Alianza. By August 1996, the government was on its sixth prosecutor in the case. The initial investigative reports from the case were "lost," including findings by the police, the prosecutor, and the judge at the scene of the crime. The ballistics report was also "lost," as were recovered bullets and bullet casings.[81](#)

There are several reasons for the lack of accountability in cases involving street children. Guatemala's justice system is notoriously slow and ineffective. When the accused are members of or have ties to government security forces, the legal system grinds even slower, and often succumbs to corruption or intimidation. The perpetrators are part of a system that has traditionally protected itself from scrutiny, observing a strong internal code of silence while punishing, through threats and violence, those on the outside who attempt to apply the law. While things have improved greatly over the past few years, intimidation and corruption in law enforcement and the legal system remain common.[82](#) Even the successful cases do not escape this pressure. After the sentence against Morales Sosa was handed down, for example, Morales publicly threatened the Casa Alianza lawyer in the courtroom, saying "You won, but now you'll see, you bastard..." [*Ganaste, pero ahora vas a ver, hijo de la gran puta.*][83](#)

The low social regard for street children exacerbates the lack of accountability for crimes against them. At best, street children in Guatemala are ignored by the society around them. At worst, they are reviled. A government official told Human Rights Watch that "the Guatemalan society rejects these kids . . . they would even like to see them dead."[84](#)

Street children do not have families and resources to press for justice on their behalf. Without such pressure, it is virtually guaranteed that the police and the public prosecutor will not investigate when their rights are violated. This negligence is compounded if the alleged perpetrator is a police officer or a private guard.[85](#) Often, the police refuse to carry out arrest warrants against fellow officers or other security force members.[86](#)

When accountability is obtained, it comes at a high price. Witnesses, family members, advocates, judges, and prosecutors are all subject to intimidation. In the ground-breaking case of Nahamán Cardona, for example, two witnesses were kidnapped and tortured, mothers of the witnesses were intimidated (and one was killed in a suspicious car accident), and an ex-police officer turned key witness suffered a murder attempt and subsequently went into exile.[87](#)

The pattern of impunity for human rights offenders and persecution of witnesses continues. In August 1996, the murder convictions for two private security guards of the *Vigilantes* agency were appealed. The men had shot ten-year-old Daniel Rosales and fourteen-year-old Rubén García in September 1994, shooting them from behind and even pausing to reload - there were a minimum of four bullet wounds in both boys. A third boy, hit by three bullets, survived. The men admitted to killing the boys.⁸⁸ As the appeal process drew near, family members, advocates, and attorneys in the case began receiving death threats. When the appeals court overturned the conviction international and domestic observers were stunned.⁸⁹ It was widely supposed that the three judges of the court had succumbed to either bribery or threats in issuing this decision.

The case of Susana Gómez illustrates the often-weak investigative efforts of the police.⁹⁰ Susana, a sixteen-year-old, was reportedly illegally detained by three uniformed National Police officers in April 1996, taken to a remote area, and raped by two of them while the third kept watch (see "Violence Against Girls," above). As of April 1997, no suspects had been identified in the case, despite the testimony of both Susana and her friend Carmén Velásquez, who was abducted along with Susana.⁹¹

Our interview with the National Police internal affairs officer charged with investigating the case, Felix Cerón Gonzales, revealed that no meaningful investigation had occurred.⁹² The approximate time of the abduction was known, as was the exact location. In addition, the girls provided not only physical descriptions of the men, but also the following information: one of the officers claimed to have been transferred from the Petén to Guatemala City, where he was stationed at the 1st precinct; one of the officers had a name tag of "Cruz," and one had a name tag of "Velásquez."

Officer Cerón declined to pursue these leads. Of the six police officers stationed in the immediate vicinity of the abduction on the night it occurred, Cerón interviewed only one, whose last name was Cruz, speaking briefly to Cruz's partner that night as well. When asked why he did not interview all six of the officers—who were not only potential suspects, but potential witnesses as well—he said, "The girls said one was named Cruz and one was named Velásquez - why would I interview anyone with any other name?!"

Nor did Officer Cerón interview any of the six other 2nd precinct police officers named Cruz or Velásquez. "They were working elsewhere that night," he said. He also declined to interview *any* 1st precinct police officers, despite knowing that the 1st precinct jurisdiction begins a mere three blocks from the scene of the abduction, and that one of the attackers told the girls he belonged to the 1st precinct. Cerón did not even check the 1st precinct duty roster to see if any Cruz or Velásquez was working that night. Finally, Officer Cerón did not look into whether any 1st or 2nd precinct police officers had been transferred down from the Petén recently, saying "He could have been lying about that."

When asked by our researcher why he had not followed any of these possible leads, Officer Cerón became exasperated and said, "We can't go bothering half a dozen officers on this, if they aren't specifically named!"

The most alarming aspect of this non-investigation was Officer Cerón's apparently genuine belief that he had conducted a proper investigation. This suggests that either the internal affairs unit is incompetent, or that this case was deliberately given low priority and assigned to an officer who would not properly investigate the allegations.

IV. ABUSES IN THE JUVENILE JUSTICE SYSTEM

The judge said that my father wanted to send me away, and that she had to do it.

-Yamileth, fourteen-year-old runaway in detention

Overview

The Guatemalan juvenile courts and detention centers are rife with human rights violations. In the courts, long (and illegal) periods of pretrial detention are tolerated by the minors' judges, due process rights are routinely ignored, and the treatment meted out to offenders varies according to their economic and familial status. Children who are taken into the state's custody for protective care are sent to the same detention facilities as children found to have committed crimes; once there, all the children are mixed together, as the facility directors aren't told by the courts the reason for each child's admission. Children and youths are also mixed together with no regard for age, with the result that a twelve-year-old boy detained for vagrancy may share a bunkbed with a seventeen-year-old convicted of armed assault. In other cases, minor boys and girls may be incarcerated in adult prisons.

In contravention of international standards, children adjudicated as delinquents are frequently sentenced to remain detained "until rehabilitated." Court personnel review these cases infrequently, with the result that many children languish in prison for months or even years, often for minor offenses. Meanwhile, they receive little meaningful education and, in most facilities, no opportunity to engage in vocational training or other productive activities.

The conditions of the detention centers are substandard. Children are crowded into dormitories and sleep on rickety narrow metal bunkbeds; some of them sleep two to a bed. Medical attention is inconsistent. The facilities in Guatemala City are much too small for the number of children committed to them (the two outlying facilities, one for boys and one for girls, are larger). None of the centers have even rudimentary libraries, and recreational opportunities are extremely limited. Schooling is provided to varying degrees at the detention centers, with some centers offering virtually no meaningful education.

At the invitation of the Guatemalan government, the boys' centers are staffed by members of REMAR (Rehabilitación de los Marginados), a Spanish evangelical group that works throughout Latin America. REMAR sets out to rehabilitate Spanish substance abusers and ex-convicts by sending them to work with troubled youth, i.e., substance abusers and children in conflict with the law. Numerous children told us that they were beaten by REMAR staff, some with aluminum baseball bats. Others had been put into isolation cells for disciplinary reasons. Still others told us that they had been coerced into abandoning their religious beliefs in favor of evangelical Protestantism.

One of the most troublesome aspects of the Guatemalan juvenile judicial system, including the courts and the detention centers, is the lack of independent monitoring and oversight. As far as we were able to learn, there are *no* governmental, nongovernmental, or intergovernmental agencies monitoring the conditions of juvenile justice in Guatemala.⁹³

Much to our surprise, given repeated avowals of "openness" and "reform," Human Rights Watch was not granted official permission to visit Guatemalan juvenile detention centers. The government agency charged with administering all juvenile detention and protection services is the Office of Treatment and Guidance for Children, Tratamiento y Orientación de Menores (TOM). (This office falls under the jurisdiction of the Office of Social Welfare, headed by the First Lady of Guatemala, Patricia de Arzú.) The director of TOM refused to give us permission to enter the children's centers when we spoke, saying, "Yes, I have the authority to grant you permission. But if you go in to the centers, you might come up with things that the government doesn't want made public . . . I don't want to take responsibility for letting you in."⁹⁴

She referred us to her superior, then-Secretary of Social Welfare Salvador Gandara Gaitán (now Vice-Interior Minister for Guatemala). Mr. Gandara refused permission by studiously avoiding our researcher for three weeks: he was always too busy to take our calls, would never return our calls, and when we offered several times to stop by and wait for him at his convenience, his secretary, obviously under orders to ensure we had no contact with Mr. Gandara, said "Oh, no, he could just leave at any time, it's completely unpredictable when he'll be here."

While the government stonewalled our efforts, we did gain very limited unofficial access to two of the five centers: the Observation Center for Girls in downtown Guatemala, and the Observation Center for Boys, better known as "Gaviotas." Interestingly, given the persistent refusal of the Guatemalan government to let us in the centers, we gained access to Gaviotas at the invitation of REMAR. This underscores the power REMAR enjoys in the administration and control of the boys' detention centers. (Access to the Girls' Observation Center was effectuated in the company of members of a local NGO.) Notwithstanding our inability to conduct thorough first-hand investigations of the detention facilities, detailed testimony gathered from dozens of previously-detained children enabled us to assess the basic conditions and prevalent practices of these centers.

Guatemalan Law

The Guatemalan Constitution and the Guatemalan Minors' Code are the primary sources of applicable domestic law. The Constitution provides that all minors, defined as people under the age of eighteen, are "unimputable."⁹⁵ This means that they lack the capacity to be held criminally accountable for their actions. The constitution further mandates that children who transgress the law be "treated" (rather than punished) by specially-trained personnel, and that their treatment emphasize education.⁹⁶ Other relevant provisions of the Guatemalan Constitution include an absolute prohibition on commingling minors with adult prisoners (Article 20), and an equal protection clause (Article 4).⁹⁷ Equal protection of the law is also guaranteed by both the 1979 and 1996 Minors' Codes;⁹⁸ this is relevant in regard to the discriminatory treatment of juveniles according to economic status, discussed below.

The 1979 and 1996 Minors' Codes

In September 1996, the Guatemalan legislature approved a new and long-awaited Minors' Code. When the new code takes effect in September 1997, it will replace an eighteen-year-old code whose worst defect, among many, is that it lumps together all children in need of government assistance or supervision into an amorphous category of "irregular conduct." Children deemed to be engaging in "irregular conduct" include street children, children who have committed violent crimes, and children who have been abandoned or abused by their families.⁹⁹ Any child deemed to fall into the "irregular conduct" category may be institutionalized by a minors' judge; in practice, this occurs frequently.

In addition to abolishing the "irregular conduct" doctrine, the new Minors' Code makes the following positive changes:

| It provides for the establishment of four new courts, and requires the judges of those courts to be specially trained and experienced in the area of children's rights. The new courts will be: Children and Youth Courts (*Juzgados de la Niñez y Juventud*), responsible for cases where children's rights or well-being are threatened, as well as for cases of children under twelve accused of criminal wrongdoing; Youth in Conflict with the Law Courts (*Juzgados de Jovenes en Conflicto con la Ley Penal*), responsible for cases in which children twelve to seventeen years old are accused of criminal wrongdoing; the Oversight Court for the Application of Measures (*Juzgado de Control de Ejecución de Medidas de la Niñez y Juventud*), responsible for ensuring that children's rights are protected during detention (or during other applicable measures), and responsible also for periodic review of the measures imposed by the trial court; and finally, the Second Instance Tribunal for Children and Youth (*Tribunal de Segunda Instancia de la Niñez y Juventud*), responsible for hearing appeals. (Articles 124-133.)

Currently, there are three Minors' Courts in Guatemala City, one of which handles cases of juvenile protection (dependency), while the other two handle cases of alleged juvenile delinquency. Two courts of general jurisdictions, one in Mixco and one in Amatitlán, each handle both types of cases. Under the 1979 Minors' Code, there is no requirement of specialized training for minors' judges or prosecutors, and current officials are not trained in children's law or human rights law.¹⁰⁰

| The 1996 code prohibits the placement of children in protective custody juvenile detention centers. (Articles 140 and 143). This is in marked contrast to current practices. (See "Commingling," below.)

| The new code explicitly demands compliance with all relevant international instruments ratified by Guatemala, including the Convention on the Rights of the Child. It also requires that the Code be interpreted and applied "in harmony with" international standards. (Articles 8, 167, 169.)

| Under the new code, minors accused of criminal transgressions have an explicit right to a defense attorney; if they cannot afford an attorney, the government will provide one. (Articles 181, 182, 194.) Currently, children brought before the courts almost never have an attorney, and the state is under no obligation to provide one. In practice, the absence of a defense attorney means that children's due process rights-such as the right to be present during the proceedings, the right to be heard, and the right to have their legal rights explained to them-are routinely flouted.

| The 1996 code prohibits the imposition of indeterminate sentences. (Article 185.) Currently, indeterminate sentences are permitted, and are used routinely by some of the Minors' Judges, who sentence children to detention centers "until rehabilitated." Children detained under indeterminate sentences may spend years incarcerated, with little or no monitoring of their "rehabilitation." (A related problem is the failure of Guatemalan detention centers to offer adequate rehabilitative opportunities, including therapy, education, and vocational training. See "Abandoned Twice," below.)

| In a significant but sparsely-worded change, the new code abolishes deprivation of liberty for children in those cases where such a penalty could not be applied to adults; in other words, the code abolishes imprisonment for status offenses or misdemeanors. (Article 275.)¹⁰¹ Although we were unable to obtain statistics from the Guatemalan government, anecdotally, as well as based on our own interviews, it is clear that a large percentage of children currently incarcerated are being deprived of their liberty due to the commission of status offenses, for example, running away from home or living on the street. Given the high use of incarceration for status offenses, as well as the very subtle mention of this provision in the 1996 code, it will be important for Guatemalan and international observers to closely monitor compliance with this provision.

| The new code specifies that incarcerated youth and children have the right to receive information regarding: facility rules and disciplinary measures; their rights in relation to facility staff; the individualized plan for their reinsertion into society; the manner and means of communicating with the outside world; the right to petition authorities and receive a response; the right not to be held in isolation; and the right not to receive corporal punishment. When isolation is necessary to prevent acts of violence, this is to be communicated to the judge responsible for overseeing the application of sentences, and to the Human Rights Ombudsman. (Article 281.) Each of these guarantees is new and, if implemented, will contribute significantly toward compliance with international law. As described below, the use of corporal punishment and isolation is currently the norm (in the boys' centers), and is one of the most egregious of the many human rights abuses suffered by detained and incarcerated children. (See "Abdication of Government Control," below.)

| With special implications for street children, the code also requires the National Police to form a special "children and youth" unit. This unit will be responsible for training all police officers regarding the rights of children, including rights protected by the Convention on the Rights of the Child and the due process protections of the Guatemalan Minors' Code. (Articles 107-108.)

| Finally, the 1996 Minors' Code strengthens the penalties for crimes committed against children by government and private security force members, including the penalties for assassination, homicide, torture, cruel and inhuman treatment, illegal arbitrary detention, and irregular internment. Penalties are also specified for the superiors of those

who commit assassination, homicide, torture, or cruel and inhuman treatment against children. (Transitional Dispositions, Article 17.)

International Law

Guatemala's passage of a new Minors' Code was explicitly intended to bring Guatemalan law into compliance with the United Nations Convention on the Rights of the Child. The convention is a comprehensive children's right document, covering areas as diverse as familial rights, educational and labor rights, and health rights. Many of these protected rights equally apply to detained children. In addition, Article 37 of the convention specifically protects children deprived of their liberty from violations of their due process and personal integrity rights:

State parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. . . .
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person every child deprived of liberty shall be separated from adults
- (d) Every child deprived of liberty shall have the right to prompt access to legal and other appropriate assistance
[.102](#)

Guatemala was one of the first countries in the world to adopt the Convention on the Rights of the Child, ratifying it in 1990; the convention entered into force in Guatemala in September 1991. Notwithstanding this presumed interest in complying with the convention, practices in the Guatemalan courts and juvenile detention facilities violate all of the above provisions, as will be described in the following sections.

Five other international instruments protect children in confinement: the U.N. Rules for the Protection of Juveniles Deprived of their Liberty (Rules for the Protection of Juveniles);[103](#) the U.N. Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules);[104](#) the U.N. Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines);[105](#) the Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules);[106](#) and the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (Detention Principles).[107](#) The Rules for the Protection of Juveniles, the Beijing Rules, and the Riyadh Guidelines apply exclusively to children, while the Standard Minimum Rules and the Detention Principles apply to adults and children alike. Some of the rights guaranteed by these documents are likewise protected by the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[108](#) Compliance with all applicable international norms and conventions is a requirement of Guatemala's 1996 Minors' Code.[109](#)

Contravention of these international standards for due process and confinement (including conditions of confinement, the right to rehabilitation, and protection against inhuman and degrading punishment) will be noted where appropriate in the following pages.

Criminalizing Poverty: Unequal Justice Based on Economic Status

Being poor is the surest indicator that a child who enters the system will end up in jail.

-Claudia de Carrillo, Chief Prosecutor, Minors' Division

International human rights law and Guatemalan law both require that due process guarantees be applied in a non-discriminatory manner.¹¹⁰ In practice, however, the Guatemalan juvenile justice system violates this precept on the basis of economic status, offering less procedural protection and fewer liberty guarantees to poor children than to middle-class children.

Poor children are most likely to be held in lengthy pre-trial detention rather than released pending adjudication. They are most likely to serve time for their transgressions, rather than being afforded the opportunity to "conciliate" with the victim. They are more likely to be imprisoned for status offenses, such as "unruly behavior" [*falta de las buenas costumbres*], or for vague and malleable offenses like "vagrancy." Finally, poor children are less likely to have their rights explained to them or to have access to an attorney or other assistance in defending themselves; consequently, they are more likely than better-off children to receive an unfavorable outcome at their judicial hearings.

This unequal application of justice was made clear to us repeatedly during the course of our investigation. Significantly, some of those most vocal and concerned about this state of affairs were the prosecutors assigned to the Minors' Division at the Public Ministry. (Although technically prosecutors, under the current scheme these officials have a special obligation also to "see that justice is done" in minors' cases, rather than act as traditional prosecutors or defenders.¹¹¹)

Claudia de Carrillo, the Chief Minors' Prosecutor, told us:

Maybe 30 to 35 percent of the cases we see should result in a lock-up. The other 65 to 70 percent of cases involve very minor transgressions, for which measures other than detention would be sufficient and more appropriate. Despite this, internment is always used.

This is especially true when it comes to poor children. The rich boy won't go to jail, even for a serious offense such as voluntary manslaughter. The poor boy, meanwhile, will spend two months in jail for stealing a necklace. They are criminalizing the poor. [The other three prosecutors nod their heads in agreement.] Being poor is the surest indicator that a child who enters the system will end up in jail.¹¹²

Pre- and Post-Adjudication Detention

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention, or imprisonment of a child shall be . . . used only as a measure of last resort and for the shortest appropriate period of time.¹¹³

Juveniles who are detained . . . awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. . . . Untried detainees should be separated from convicted juveniles.¹¹⁴

Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.¹¹⁵

There are two common human rights violations in the pretrial detention practices of the Guatemalan juvenile justice system.¹¹⁶ First, poor children-and above all street children-are almost always held in detention pending their hearings

before a judge, while more economically-advantaged children are likely to be released to their parents. This amounts to discriminatory and arbitrary detention, in that street children also should be eligible for release, if not to a parent then to appropriate guardian care. Second, pretrial detentions frequently exceed the statutory limitation of thirty working days. It is not unusual for children to be detained for several months or even a year, pending their adjudicatory hearings.

Under the current (1979) Minors' Code, an initial hearing is to be held immediately following the child's apprehension, as soon as the accused child is brought before the minors' judge.¹¹⁷ Although in theory this hearing is supposed to be attended by the child, the arresting police officer, the victim, and the child's parents or guardians, in practice usually only the child and the police officer are present.¹¹⁸ At this hearing, the arresting officer informs the judge of the child's alleged transgression; the child is then supposed to be allowed to give a statement to the judge. (Several children told us that they were not given an opportunity to speak to the judge - this of itself is a grave violation of procedural due process protections.) If no more information is needed, the judge may decide the case based on the initial hearing alone; options available to the judge at this stage include imposing a fine, a warning, probation, or even ordering the internment of the child in a detention facility. In other words, a child may be ordered detained on the basis of an initial hearing at which only the child and the accusing police officer were present, and where the child was neither represented by counsel nor accompanied by a parent or guardian.¹¹⁹

It is common for a second hearing to be ordered, often referred to as the "definitive hearing." The Minors' Code requires that the second hearing be held within thirty working days of the initial hearing (those within the system, though, generally refer to a forty-five-day period, taking into account the total lapse of time rather than just the working days). A three-day extension is permitted. (The 1996 Code, Article 227, allows for a single forty-five day extension.) In practice, however, much longer delays are the norm.¹²⁰

The most common reason for delays between the initial hearing and the definitive hearing is the elaboration of the requisite "bio-psycho-social" report. This report, required by the 1979 Code,¹²¹ is elaborated by a social worker assigned to the court. As the name implies, the report aims to present the judge with a comprehensive overview of the conditions of the child's life; the goal is to assist the judge in determining what measures are appropriate to each individual case. The delays are due to inadequate staffing. In cases of children from outside Guatemala City, production of the reports is usually delayed even further, as the entire juvenile justice apparatus, including courts, prosecutors, investigators, and detention facilities, is located in Guatemala City.¹²² Meanwhile, the accused child remains not only detained, but detained together with adjudicated offenders.

Children with families able to "push" to get them out may be released pending their definitive hearing.¹²³ Several untried children we interviewed told us they were only being detained because their parents had not come to get them out. One girl told us, "If I had a guardian to come claim me, I could leave today!"¹²⁴

According to a minors' judge we spoke with, children without a parent or guardian present at the definitive hearing will be interned "even if it is not a serious crime and internment is not warranted. We have to intern the child until a responsible family member is found." Once internment is ordered, according to the judge, children are detained for a minimum of three months. Although usually post-adjudication detention ranges up to one year, she said, it can continue until the child reaches majority, or until the detention facility finds "family resources."¹²⁵ For some children, that day may never come.

In contrast to street and other poor children, who may be interned simply for lacking a responsible parent or guardian, children with "family resources" usually avoid detention even when they are found guilty of the alleged offense. This can happen in three ways. First, the judge may decide that a warning and a fine are sufficient. "As soon as [the parents] pay the fine, the child goes home."¹²⁶ Second, the judge may opt to release the child to his parents under a bail arrangement (*depósito*). This is a likely choice if it is not a serious crime, the child is in school, and there are sufficient

family resources to pay the bail and address the child's delinquency.¹²⁷ Finally, a child with family resources may avoid imprisonment by "conciliating" with the victim. This process, involving the offender's family and the victim's family, usually involves not only payment for damages, but also proof of the offending child's good moral character, such as letters from school teacher, priests, or employers.¹²⁸

These methods for avoiding detention, all of which require the child to have not only a parent, but economic resources as well, are not available to the vast majority of children incarcerated in Guatemalan juvenile detention facilities. This means that poor children, street children, and orphaned or abandoned children are more likely to be detained than all other categories of children. The answer to such discrimination, of course, is not to incarcerate more children, but to appoint guardians or otherwise ensure equal treatment for the disadvantaged children.

The first time I was picked up I was thirteen. They held me for three months at San José Pinula. Theoretically there was a maximum stay of forty-five days there, but they didn't release me after forty-five days because no one came to get me. Finally they just let me out after ninety days.¹²⁹

I was in Gaviotas for four months and I never saw a judge. I had no idea how long I'd be there.¹³⁰

My friends and I were arrested together and taken before a judge. . . . We all saw her together, at one time. She scolded us severely . . . She said that we were bad-mannered and that we didn't respect society's rules. . . . She said, if our parents didn't come get us, we'd be kept in Gorriónes until we turned eighteen.¹³¹ (Testimony from a fifteen-year-old.)

After I was at Gorriónes for a week, my mother came to see me. She said she would not take me home. She said I'd have to stay there until I turned eighteen.¹³²

Lack of Counsel

A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after the arrest and shall be provided with reasonable facilities for exercising it.

If a detained person does not have a legal counsel of his own choice, he shall be entitled to have [one] assigned to him . . . in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.¹³³

As just described, a child accused of a crime may be ordered into detention by a minors' judge after an initial hearing or after a second hearing. In neither case is the child assisted by legal counsel (unless the child's family is wealthy enough to afford private counsel, which is rare). Nor does the child receive even a basic orientation as to his legal rights.¹³⁴ The failure by the Guatemalan government to provide adequate legal assistance to indigent juvenile defendants is a contravention of international standards.¹³⁵

The new Guatemalan Minors' Code stipulates that public defenders are to be made available to juvenile defendants. Implementation of this provision, due in the fall of 1997, will be an important step toward securing the rights of accused minors. Human Rights Watch has learned, however, that the initial plan is to provide four or five defenders for juveniles.¹³⁶ With approximately 4,000 children being brought before the courts each year, this means that each defender will have up to 1,000 cases to handle each year. This is an extremely high caseload; implementation of this plan should be closely monitored to ensure that the legal assistance provided to accused children is prompt, thorough, and accurate.

Incarceration for Status Offenses

International standards discourage the incarceration of children for status offenses, which are all offenses that would not be crimes if committed by an adult.¹³⁷ As stated, the new code does abolish imprisonment for status offenses. Currently, however, large numbers of those detained in Guatemala's juvenile detention centers are there solely due to the commission of status offenses, including running away, vagrancy, "public disorder" and homelessness.¹³⁸ Because Guatemala has no state programs for street children, runaway children, children with substance addictions, or even abandoned children, these children, when apprehended by the authorities, are sent to detention centers. What happens with these children after the new code takes effect, in September 1997, will reveal Guatemala's seriousness in transforming what is currently an incarceration-response to troubled children.

Yamileth is an example of a girl incarcerated for a status offense: she was fourteen at the time we interviewed her at the Girls Observation Center in Guatemala City.¹³⁹ Yamileth had been at the facility for one month when we spoke and did not know how long she would be kept there. She said she could leave immediately if a guardian came for her, but that she had no guardian. Yamileth told us that her father had brought her to the Girls' Center because she had run away from home, and that he also accused her of stealing from him and working in a bar (a euphemism for prostitution). A social worker at the center later told us that Yamileth had been abused by her father and her stepmother.

The same day that her father brought her to the center, Yamileth was taken before a minors' judge. "The judge didn't want to hear what I had to say," the girl told us. "She wouldn't let me give a statement. She said, 'Take her away from here, I don't want to see her anymore.'"¹⁴⁰ Yamileth's father talked to the judge outside the presence of the girl; on the basis of what he told the judge, she was sent away.

Yamileth told us that several other girls were being detained at the center simply for being runaways; one of these girls, she said, had been there for more than a year.

Abandoned Twice: Neglect in Detention Centers, and Other Violations

There are five main detention centers for juveniles, all located in or near Guatemala City. In addition, adolescent boys are sometimes held in the adult male preventive detention center known as "Zone 18," while adolescent girls have reportedly been held in the women's prison, Santa Teresa. The primary juvenile detention facilities are:

| Diagnostic and Placement Center. This boys' facility, located in downtown Guatemala City, is a clearinghouse for boys recently accused of crimes or otherwise brought into the juvenile justice system. In theory, boys are only to be held at the Diagnostic and Placement Center for a few days. In practice, stays are often much longer.

| Observation Center for Girls. This is a girls' facility, also located in downtown Guatemala City. As with the Diagnostic Center for boys, this is supposed to be a facility for temporary stays, just long enough to "stabilize" the girls, according to Guidance and Treatment director Victoria Monzón, who further stated that girls will only be kept at the center if they are likely to be released from the juvenile justice system quickly - otherwise they will be sent to Gorriónes.¹⁴¹ In practice, though, girls stay at the Observation Center for months at a time, with some staying more than a year.

| Re-education Center for Boys, San José Pinula. This detention center is located approximately forty-five minutes from Guatemala City, by car. It is several kilometers from the main highway, in a rural setting. Technically, San José Pinula is comprised of two separate facilities: Stage One and Stage Two. In theory, minor offenders are sent to San José Pinula, while repeat offenders and those charged with serious crimes are sent to Gaviotas. This distinction does not

always hold true in practice. Many of the boys we spoke with had been incarcerated for minor offenses at Gaviotas, while others had been sent to San José Pinula as repeat or serious offenders.

| Re-education Center for Girls, "Gorriones." This detention center is located in Mixco, near Guatemala City. Its population includes serious and repeat offenders, first-time offenders, pregnant girls, runaways, street girls, and girls in state custody for their own protection.[142](#)

| Observation Center for Boys, "Gaviotas." Located in Guatemala City, this is the highest security facility for boys, used primarily for repeat offenders or for serious first-time offenders.

Incarceration of Abandoned and Abused or Neglected Children

A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. State parties shall . . . ensure alternative care for such a child.[143](#)

Under current Guatemalan practices, children in the protective custody of the state are incarcerated together with adjudicated offenders. They are kept in the same facilities, share the same dormitories, and are treated to the same daily routine (or lack thereof). Indeed, the directors of the facilities aren't told by the courts the reason for any particular child's incarceration, so in truth there is no differential treatment for offenders and dependent children.[144](#)

According to the Guatemalan government, 80 percent of all girls admitted to correctional facilities "are admitted because they are at social risk, and only 20 percent for breaking the law."[145](#) The category "at social risk" is vague, and probably refers to the "irregular situation" doctrine mentioned earlier. In any case, "at social risk" probably includes, but is not limited to, protective custody. A 1993 study found that 35 percent of all girls deprived of their liberty in Guatemala, and 3 percent of all boys, were in state custody for their own protection.[146](#) Doctors Without Borders estimated that approximately 50 percent of all detained girls are in the centers for their own protection.[147](#) These figures do not include children who are detained for living on the street, "vagrancy," "public disorder," or other "offenses" routinely committed by street children. They do include children in detention because they are malnourished, deaf-mute, or can not communicate in Spanish, in addition to the customary protective reasons of physical abuse, abandonment, or neglect. For example:

| Doctors Without Borders found two girls, aged eleven and twelve, who were in a detention center because they were severely malnourished. They also reported seeing girls held for more than a year, simply because they were foreign nationals and there was no arrangement for their repatriation.[148](#)

| A minors' prosecutor learned of an eight-year-old boy who was being held at the Diagnostic and Placement Center where authorities deposited him after another boy on the street raped him.[149](#)

| A researcher from Columbia University met a deaf-mute boy, approximately seventeen years of age, who was being held indefinitely in the Gaviotas detention center. A psychologist at Gaviotas told the researcher that the boy had not committed any crimes. He had been detained by the police when found "wandering in the streets," and was subsequently brought to Gaviotas, where he spent his days working in the kitchen.[150](#)

| The same researcher met a girl in a similar situation at the Observation Center for Girls:

As the director led me through the center, I noticed a young girl trailing behind us. "She doesn't speak Spanish," the

director explained when I tried to speak to the girl. "No one knows what language she speaks."

"Is she pregnant?" I asked, noticing her protruding belly. "No," replied the director . . . "She's just fat. She doesn't have anything else to do but eat."[151](#)

The damage done to children who are removed from an abusive or neglectful home situation, only to be placed in a child's prison, can only be guessed at. As discussed later in this report, no meaningful psychological rehabilitation is attempted at these "re-education" centers. The effect of this neglect on abused children is considerable. Doctors Without Borders told Human Rights Watch: "Take a girl who was raped by her father and is in for her own protection. The girl may stay in the centers one year, two years, or even more. This whole time, there is no work done on her post-traumatic stress. Chances are, she'll leave with more trauma than she came in with. And she'll learn from the other girls about drugs and crime."[152](#)

Guatemala's practice of incarcerating dependent children together with delinquent children is supposed to end when the new Minors' Code takes effect in late 1997.[153](#)

Commingling

In addition to that just described, other kinds of illegal commingling take place in the Guatemalan justice system. Young children are incarcerated together with older adolescents, and adolescents are incarcerated together with adults. Both practices contravene international standards, and the practice of incarcerating minors with adults is illegal under Guatemalan law as well.

Commingling Young Children with Older Adolescents

The detention of juveniles should only take place under conditions that take full account of their particular needs, status, and special requirements according to their age, personality, sex and type of offense, as well as mental and physical health, and which ensure their protection from harmful influences and risk sit